



# INDUSTRY CIRCULAR

**DEPARTMENT OF  
THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Washington, D.C. 20226**

**Number: 77-9**

**Date: June 7, 1977**

## COMMERCIAL BRIBERY

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Tax-paid Wine Bottling Houses; Brewers, Importers, Wholesale Malt Liquor Dealers, Wholesale Liquor Dealers and Others Concerned:

Purpose. This circular is to inform industry members that ATF Ruling 77-17 will be published in the May issue of the Alcohol, Tobacco and Firearms Bulletin. The ruling pertains to sales promotion contests and will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms has been asked to restate its position regarding the application of section 5(c)(2) of the Federal Alcohol Administration Act (27 U.S.C. 205(c)(2)) to sales promotion contests (incentive programs) which involve the awarding of various prizes to officers, employees, or representatives of a trade buyer (a wholesaler or retailer) by an industry member (a distiller, brewer, rectifier, blender, or other producer, or importer or wholesaler of distilled spirits, wine or malt beverages). In addition, the Bureau has been asked to state its position regarding the proper interpretation of the term "officer" as used in section 5(c)(2) of the Act.

Several industry members have offered various types of awards or compensation to officers, salesmen, and sales managers of wholesalers or retailers for their participation in sales promotion contests. These promotional contests are usually structured in such a way that the industry member either offers or awards the compensation directly to the officer, employee, or representative of the trade buyer or to the trade buyer entity itself with the understanding that the trade buyer will make the choice as to which individual will receive the compensation. Further, some industry members have expressed the belief that awards offered or

given to a president, vice president, or any other top corporate executive, whether offered directly or indirectly through the trade buyer entity, are not subject to the prescriptions of section 5(c)(2).

Section 5(c) of the Act makes it unlawful for any industry member, directly or indirectly or through an affiliate, to induce a trade buyer engaged in the sale of distilled spirits, wine, or malt beverages to purchase his products with a resulting complete or partial exclusion of products sold by others, by (1) commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer or employee or representative of the trade buyer. However, the above would not apply to bonuses, etc., offered or given to a sole proprietorship where the business is operated and managed solely by the owner.

In Revenue Ruling 54-286, 1954-2 C.B. 576 (Internal Revenue), it was specifically held that the furnishing of gifts by an industry member to an employee of a trade buyer in order to reward him for doing a good merchandising job in his community would fall within section 5(c)(2). Also, Revenue Ruling 54-391, 1954-2 C.B. 579 (Internal Revenue), held that payments or gratuities tendered either directly to individual employees of trade buyers or indirectly to groups or associations of such employees by industry members may result in a violation of section 5(c)(2).

Moreover, in 1970, the Bureau issued Industry Circular 70-24 which specifically relates to the illegality of sales promotion contests. The circular advised that the offering or giving of prizes, such as trips abroad, to sales managers of wholesale liquor dealers, or the offering or giving of money to managers or sales employees of wholesalers or retailers, would fall within section 5(c)(2).

Held, section 5(c)(2) does not preclude the offering or giving outright of a bonus, premium, or compensation to a trade buyer entity itself. However, in those instances where a bonus, premium, or compensation is offered or given either directly or indirectly through the trade buyer to any officer, employee, or representative of the trade buyer, section 5(c)(2) would be violated assuming the other requirements of the Act are met.

Section 5(c)(2) clearly prohibits any and all compensation of a trade buyer's officers, employees, or representatives notwithstanding that such bonus, etc., is negotiated directly through the trade buyer.

A bonus, premium, or compensation will be regarded as being offered or given outright to a trade buyer entity where it is established that:

1. The bonus, etc., is received free of any restrictions placed on its use by the industry member.
2. The trade buyer entity was not acting as a mere conduit between his employees and the industry member.
3. The records of the recipient trade buyer accurately reflect such a bonus, etc., as an asset of such trade buyer entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the bonus, etc., as a personal asset of the person receiving the item.

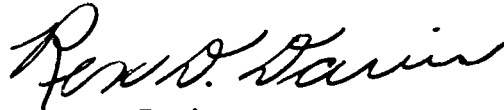
Of course, any bonus, etc., given outright to a retailer trade buyer entity would constitute an inducement under section 5(b)(3) of the Act. (27 U.S.C. 205(b)(3))

Notwithstanding the above, certain bonuses, etc., such as trips, because of their very nature will be regarded as being offered or given to an officer, employee, or representative of a trade buyer even though initially given directly to the trade buyer entity. Since the entity itself (other than a sole proprietor) cannot take a trip, a passing through to the officers, employees, or representatives of the trade buyer who take the trip is clearly contemplated; and thus, would be considered an inducement within the meaning of section 5(c)(2).

Held further, that the term "officer" as used in section 5(c)(2) means all corporate executives such as presidents, vice presidents, treasurers, etc.

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Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.



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Director

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